

In the  
**United States Court of Appeals**  
For the Ninth Circuit

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MILES W. ROBINSON, Appellant,  
vs.  
R. W. STEVENS, et al., Appellees.

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Appeal from the United States District Court  
for the Eastern District of Washington,  
Southern Division

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HONORABLE SAM M. DRIVER, Judge

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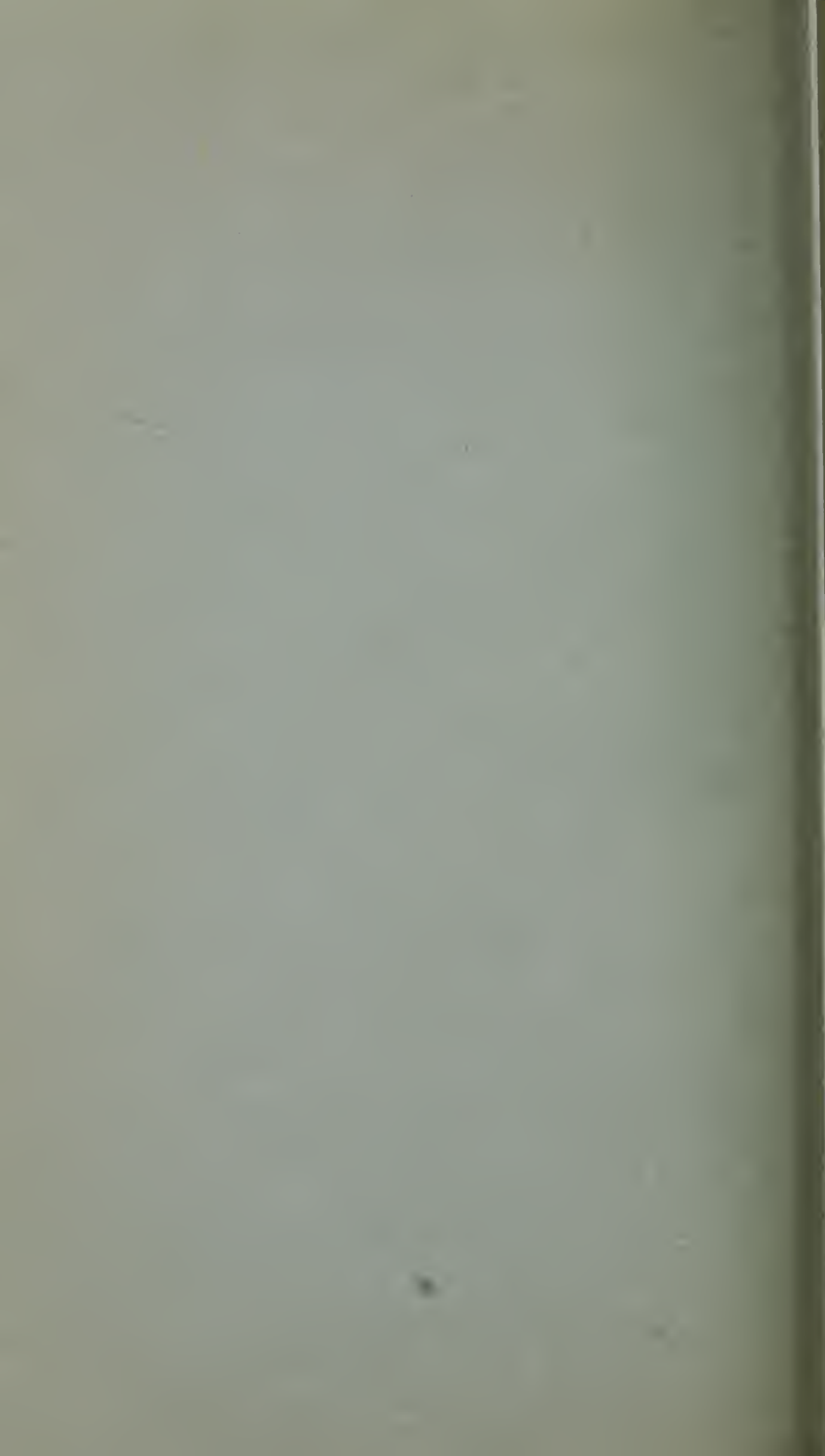
BRIEF OF APPELLEE,  
St. Mary's Hospital

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of Providence, a corporation,  
known in this action as  
St. Mary's Hospital.

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**STATEMENT OF PLEADINGS AND FACTS  
RELATING TO APPELLEE,  
ST. MARY'S HOSPITAL**

Plaintiff's (Appellant's) Complaint (R.3 et seq.) charged all the defendants generally with certain acts leading up to the termination of his hospital privileges (Para. XXIX, R.28). He alleged that defendant, St. Mary's Hospital, fur-

ther refused to readmit him to practice in that hospital (Para. XXX, R.29). In essence, the complaint charges a conspiracy among the defendants against him, although the complaint is not clear as to the part played by this hospital, except that the hospital terminated his right to practice therein and never readmitted him. Plaintiff, in his original complaint, specifically excluded both hospitals in his prayer for damages. His subsequent oral motion to amend was granted (Footnote, R. 35, appellant's brief pg. 2) with the result that both hospitals were included in the prayer for damages.

The separate answer (R. 43 et seq.) of St. Mary's Hospital contained a denial of the matters set forth in the complaint based upon a lack of knowledge as to those matters by that answering defendant. The allegations of the complaint wherein it was alleged that the hospital defendant entered into a conspiracy were specifically denied.

At the trial before the Court, and at the close of Plaintiff's case, Defendant St. Mary's Hospital, moved for an involuntary dismissal under Rule 41 (b) Federal Rules of Civil Procedure. (R 1625). This motion was granted and separate and supplemental Findings of Fact and Conclusions of Law as to St. Mary's Hospital (R. 107 et seq.) were entered. Judgment of Dismissal as to all of the defendants was thereupon entered. (R. 113).



In the interest of brevity, Appellee, Sisters of Charity of the House of Providence (referred to in this brief as St. Mary's Hospital) hereby adopts the Statements of Fact contained in the briefs of the other Appellees. Only those facts specifically relating to this defendant hospital are set forth herein.

Appellee St. Mary's Hospital is owned and operated by The Sisters of Charity of the House of Providence, a non-profit, charitable corporation of the State of Washington. (Pre-Trial Order P. 8, R. 82). On May 22, 1951, appellant was permanently expelled from membership in the Walla Walla Valley Medical Society. On May 25, 1951 St. Mary's Hospital was advised by the Secretary of the Medical Society that appellant was no longer a member of the Society. (Ex. 119). The Constitution and By-Laws of the Medical Staff of St. Mary's Hospital adopted September 28, 1950, (Ex. 299) required that a doctor to be eligible for membership on the Medical Staff of the Hospital must be a member of the Walla Walla Valley Medical Society. Membership on the Medical Staff of the Hospital was required before a doctor could practice in the hospital or attend patients therein. Appellant, prior to his expulsion from the society, was aware of this. (R. 393, Ex. 122). By letter dated June 21, 1951 (Ex. 127) Appellant was notified by the hospital that, in accordance with the provisions of Article III, Section 3 of the Constitution and By-Laws

of the Medical Staff, his membership on the staff of the Hospital was cancelled and that, as a consequence, he was not privileged to attend patients in the hospital.

On February 18, 1952 (Ex. 167) Appellant advised the hospital of the decision of the Judicial Council of the AMA reversing his expulsion from the local society and requested reinstatement to the Medical Staff. Some "week or weeks" (R. 452) later, Appellant had a telephone conversation with Sister Joseph, the then administrator of the hospital, in which he was advised that he could not be re-admitted to the medical staff at that time. On June 25, 1952, Appellant as Plaintiff commenced an almost identical action to the instant case in the Superior Court of the State of Washington against St. Mary's Hospital and the other defendants in this cause. On July 21, 1952 Appellant was reinstated to membership in the Society. On numerous subsequent occasions, and during the pendency of his proceeding in the State Court, Appellant requested reinstatement to the hospital's staff (Exs. 175, 218, 219). Appellant has not been re-admitted to hospital privileges at St. Mary's.

### ARGUMENT

Insofar as St. Mary's Hospital is concerned there appear to be the following questions involved:

**1. Did the hospital, its agents or officers, conspire with any of the other defendants to procure Appellant's expulsion from the Medical Society and his subsequent loss of hospital Staff privileges?**

To ask the question is virtually to answer it. The record is bare of any indication that the hospital or its authorities acted in concert with anyone other than to advise Appellant that he could no longer be a member of its staff after being expelled from the Society. This last action was automatic, and required under the Constitution and By-Laws of the Medical Staff, of which Appellant had previously been a member.

**2. Did the hospital have the right to continue to exclude Appellant from its Medical Staff and the use of its facilities after his reinstatement in the Medical Society?**

The Supreme Court of the State of Washington in an en banc decision has recently disposed of this question. (**Group Health Cooperative of Puget Sound et al., v. King County Medical Society et al.**, 39 Wn. (2d) 586; 237 P. (2d) 737 (1951).

The case was the outgrowth of a battle between the King County Medical Society and a cooperative organized for the purpose of furnishing contract medicine. One defendant, Swedish Hospital, a non-profit corporation, was alleged to have entered into a conspiracy with the Medical Society and others. That the part played

by defendant hospital in such conspiracy had consisted of the adoption of by-laws and regulations, submitted by other defendants, under which access to the hospital was denied to any physician not a member of the Medical Society; i. e. presumably physicians not members of the Society but employed exclusively by the cooperative on a salaried basis. The Court said, at page 667 Washington Reports:

“The question of whether appellants have established a cause of action against respondent Swedish Hospital can be quickly disposed of. Appellants base their case against Swedish Hospital on the claim that this institution was a part of the general combination or conspiracy to restrain competition. After an examination of the evidence, we have reached a contrary conclusion, as heretofore noted. Absent this element, there is no ground for relief at law or in equity.

**“Private hospitals have the right to exclude licensed physicians from the use of their facilities, such exclusion resting within the discretion of the managing authorities. People v. The Julia F. Burnham Hospital, 71 Ill. App. 246; Harris v. Thomas, 217 S. W. (Texas) 1068; Levin v. Sinai Hospital of Baltimore City, 186 Md. 174; 46 A. (2d) 298.”** (Emphasis supplied)

In view of *Erie Ry., Co. v. Tompkins*, 304 US 64; 58 S. Ct. 817, the holding of the Washington Supreme Court must be held to be the law in this case.

There is an exhaustive annotation on the sub-

ject of "Exclusion of or discrimination against physician or surgeon by hospital authorities" in 24 ALR 2d 850, wherein it is said (page 852):

"In the case of private hospitals, it is generally held that the exclusion of a physician or surgeon from practicing therein is a matter which rests in the discretion of the managing authorities."

Cases from seven jurisdictions are cited in support of the foregoing proposition.

"It seems to be the practically unanimous opinion that private hospitals have the right to exclude licensed physicians from the use of the hospital, and that such exclusion rests within the sound discretion of the managing authorities."

**26 Am. Juris., Hospitals, Pg. 592, Sec. 9**

**3. Granting, therefore, that the hospital in the discretion of its managing authorities had the right to continue to exclude Appellant from its Medical Staff, was that decision a part of the alleged conspiracy or from improper motives?**

The learned trial judge in his oral decision said: (R. 1663)

"Now I concede that the hospital would not have the right to arbitrarily or for improper motive or improper reason reject an application, but I think the prima facie rejection by a private hospital does not give rise to a cause of action unless the plaintiff can show that there was some abuse of discretion, and on that basis, since there was none shown

here, I think the motion should be granted as to St. Mary's, as well as the others."

There is no evidence in the record (other than Appellant's suspicion) to indicate that the refusal to reinstate Dr. Robinson was the result of a conspiracy or that such refusal was occasioned by reasons other than those which the discretion of the managing authorities believed to be in the best interests of the hospital.

The judgment of the United States District Court should be affirmed.

Respectfully submitted,

WM. KEYLOR SMITH

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Providence, a Corporation, known  
in this action as St. Mary's Hospital